

## **REMARKS**

This is a response to the Office Action mailed September 16, 2003 in relation to the above-identified patent application. In that Office Action, the Examiner rejected claims 3, 4, 6, and 7 under 35 U.S.C. 102(b) as being anticipated by Sharp, et al.; rejected claims 6 and 7 under 35 U.S.C. 102(e) as being anticipated by Wang, et al.; and provisionally rejected Claims 3 and 4 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 15 of U.S. Patent application serial no. 10/016, 784.

### **Rejection of Claims 3, 4, 6, and 7 Under 35 U.S.C. 102(b)**

Claims 3, 4, 6, and 7 have been amended to overcome the rejection under 35 U.S.C. 102(b) as being anticipated by Sharp, et al. More particularly, independent claims 3, 4, 6, and 7 have been amended to recite “a polarization selection element disposed between the first interleaver stage and the second interleaver stage.”

It is respectfully submitted that Sharp, et al. neither discloses nor make obvious this limitation.

Support for this amendment to the claims is found in Figure 1, which clearly shows a polarization selection element 12 at the output side of the birefringent element assembly 13 of a Solc birefringent filter, in the specification at paragraph [0072] which discusses the polarization selection element 12 of Figure 1, and in the specification at paragraph [0024] which discloses using first and second interleavers. Solc birefringent filters, such as that shown in Figure 1, are commonly used as interleavers as discussed in paragraph [0071]. Therefore, it is respectfully submitted that no new matter has been added.

### **Rejection of Claims 6 and 7 Under 35 U.S.C. 102(e)**

The Examiner rejected claims 6 and 7 under 35 U.S.C. 102(e) as being anticipated by Wang, et al. Independent claims 6 and 7 have been amended to change them from apparatus claims to method claims. It is respectfully submitted that even if the interleavers of Wang, et al.

were identical to those of the present invention (which they are not), that there is no disclosure in the Wang, et al. reference to indicate that they were made according to the novel method of the present invention.

It is important to appreciate that the present invention provides a systematic method for defining phase delays and birefringent element orientations. Many different interleavers can be defined using the method of the present invention. However, the mere fact that a prior art interleaver exists which could have been made according to the present invention (if indeed, such a prior art interleaver does exist) does not mean that the interleaver was made that way.

Further, it is respectfully submitted that none of the interleavers disclosed by Wang et al. are actually made according to the method of the present invention. Although some of the parameters (such as either the phase delays or the birefringent element orientations) of the interleavers of Wang et al. are the same as those of interleavers made according to the present invention, in no instance are all of the parameters of a single interleaver the same. That is, every interleaver disclosed by Wang, et al. has substantial differences in either the phase delays or the birefringent element orientations and none of the interleavers disclosed by Wang et al. are made according to the methods of amended claims 6 and 7.

As such, Wang, et al. neither discloses nor makes obvious the novel methods of the present invention.

### **Double Patenting Rejection**

A terminal disclaimer which disclaims the terminal portion of any patent issuing on the subject patent application that extends beyond the termination of any patent issuing upon U.S. application serial no. 10/016,784 and which requires co-ownership of such patents is provided herewith to obviate the double patenting rejection of the subject patent application.

Please note that applicant's representative has a new address. Please address all correspondence to **Rutan & Tucker LLP, 611 Anton Blvd., Fourteenth Floor, Costa Mesa, CA 92626-1931**. A Revocation of Power of Attorney and Substitute Power of Attorney are provided herewith.

Respectfully submitted,  
Rutan & Tucker, LLP

By: 

Norman E. Carte

Registration No. 30,455

Telephone: 714 641-3461